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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

11 United States of America, Case No. CR-18-00422-PHX-SPL-02
12 Plaintiff, Hon. Steven P. Logan

13 v.
14 Michael Lacey, *et al.*,
15 Defendants.

Case No. CR-18-00422-PHX-SPL-02
Hon. Steven P. Logan

**DEFENDANT LARKIN'S JOINDER
IN DEFENDANT BRUNST'S
OPPOSITION TO GOVERNMENT'S
MOTION TO DEFER DISCLOSURE
OF CARL FERRER'S JENCKS ACT
STATEMENTS AND OBJECTIONS
TO IN CAMERA FILING OF THE
SAME, AND REQUEST FOR
DISCLOSURE OF THE SAME (DOC.
477)**

20 It is expected that excludable delay under 18 U.S.C. § 3161(h)(1) will occur as a result
21 of this motion or an order based thereon, as explained more fully below.

22 Defendant James Larkin hereby joins in Defendant John Brunst's Opposition to
23 Government's Motion to Defer Disclosure of Car Ferrer's Jencks Act Statements and
24 Objections to In Camera Filing of the Same, and Request for Disclosure of the Same (Doc.
25 477) ("Opposition to In Camera Motion re Carl Ferrer's Jencks Act Statements"). Mr. Larkin
26 adopts the positions set forth in said Opposition to In Camera Motion re Carl Ferrer's Jencks
27 Act Statements as if fully set forth herein.

28 Pursuant to the Scheduling Order in this case entered on May 2, 2018, the

1 government's deadline for "[p]roduction of Jencks materials and witness impeachment
 2 material, if not produced sooner," was February 25, 2019. *See* Doc. 131 at 2. Defendants
 3 filed a Joint Status Report on January 18, 2019 (Doc. 443), which the Court treated as a
 4 motion/request to modify the Scheduling Order (*see* Doc. 448). The government objected
 5 to Defendants' request to continue Defendants' upcoming deadline for four months (*see, e.g.*,
 6 Doc. 446). At the January 25, 2019 status conference, the government continued to oppose
 7 Defendants' requested continuance of the Scheduling Order, emphasizing the government's
 8 intended compliance with the Scheduling Order:

9 As the scheduling order sets out, the government's agreed to
 10 provide the defendants with Jencks material approximately 11
 11 months before trial. As Your Honor is aware, in most federal
 12 cases defendants aren't given Jencks materials until after a witness
 13 has testified. We are giving it to them 11 months before trial.

14 January 25, 2019 Hearing Transcript at 12:22-13:3. The Court denied Defendants' request
 15 for a continuance. *See id.* at 67:3-67:7 ("After carefully considering all of the issues, the
 16 motion, which is Document Number 443, will be denied. The current deadlines in the
 17 scheduling order that are spelled out in Document Number 131, the government and defense,
 18 I am ordering you both to continue to meet those deadlines.").

19 Then, just a few weeks later, the government filed a secret, *in camera* motion to modify,
 20 providing no explanation and plainly impacting Defendants' ability to meet their obligations
 21 under the Scheduling Order. In effect, the government's secret, *in camera* motion is a motion
 22 to modify the Scheduling Order. Further, at the January 25, 2019 status conference related
 23 to the Scheduling Order, not only did the government not disclose its need to modify the
 24 Scheduling Order, it also trumpeted its compliance with the Scheduling Order as a reason to
 25 deny Defendants' requested continuance.

26 For all the foregoing reasons, as well as those laid out in Doc. 477, Mr. Larkin requests
 27 that the Motion to Defer Disclosure (believe to be Doc. 461) be disclosed to the defense so
 28 that Defendants may lodge further objections and briefing with the Court. In the interim,
 Mr. Larkin objects to the *in camera* filing of the Motion and opposes the Motion itself. He

1 further requests that Ferrer's statements be immediately disclosed to the defense consistent
2 with the Court's Scheduling Order.

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Respectfully submitted,

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6 Dated: March 1, 2019

/s/ Whitney Z. Bernstein

7 Whitney Z. Bernstein
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8 Bienert, Miller & Katzman, PLC
Attorneys for James Larkin

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